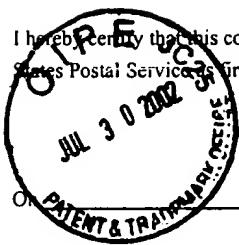


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July 19, 2002

TOWNSEND and TOWNSEND and CREW LLP

By: Debra A DeBello

Debra Ann DeBello

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Joseph B. Prullage

Application No.: 09/441,035

Filed: November 16, 1999

For: INSECT BAIT STATION

Examiner: K. Rowan

Art Unit: 3643

DECLARATION UNDER 37 C.F.R. 1.132

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

I, George Lindahl, being duly warned that willful false statements and the like are punishable by fine or imprisonment or both (18 U.S.C. § 1001), and may jeopardize the validity of the patent application or any patent issuing thereon, state and declare as follows:

1. I am a Vice President of Development and Technical Services of Wellmark International. Wellmark is a world leader in pest control management, and the assignee of the present application.
2. I have read and am familiar with the contents of the present patent application. In addition, I have read the Office Action dated February 19, 2002, received in the present case. It is my understanding that the Examiner

is concerned that claims 1, 12, 26-27, 31, and 33-34 are allegedly obvious under 35 U.S.C. §103(a) over U.S. Patent No. 1,286,763 ("Pfeiffer").

Similarly, the Examiner is concerned that claims 2-4, 7-10, 13-25, 28-30, and 32 are allegedly obvious under 35 U.S.C. §103(a) over Pfeiffer in view of U.S. Patent No. 4,671,010 ("Conlee"). It is also my understanding that during an interview on May 21, 2002 with Applicants' representative, the Examiner was especially concerned with the teaching of Conlee. For the reasons set forth herein, I believe the Examiner's concerns have been overcome.

3. Conlee describes an old concept with a new feature. The concept is a hollow microscopic fiber, wherein pheromones are dispensed. The diameter of the hollow portion of the microfiber regulates the volatilization of its contents. Masses of these microfibers are aerially applied with sticking agents so that the microfibers stick to a crop. The pheromone is dispensed throughout the field causing mating disruptions.
4. The new feature in the Conlee patent is the addition of an insecticide coating the outer surface of the microfiber, which results in a decrease of mated pink bollworms, e.g. from 15% to 7% compared to prior art. Please see Example 2 of Conlee.
5. Conlee describes a treatment designed to be applied to one side of a leaf, in essence, exposing only one side of the microfiber. In contrast, the present device is preferably hung in the foraging habitat of a house fly, and is available to the house fly regardless of its approach or chosen landing site.
6. Conlee teaches microtubles coated on the outside with a *contact* toxicant. The present invention preferably uses an *oral* toxicant bait applied to a longitudinal groove on the outside of the station.

7. Advantageously, the present invention maximizes landing sites available and bait presentation to foraging flies, due to the continuous curved surface, which by definition, is an infinite number of edges, while at the same time minimizing exposure of the toxicant while the station is handled.
8. Importantly, another inventive feature of the present invention is that an unbaited part of the present device comes into contact with the handler, while, for example, being placed at the site to be treated. The present invention **minimizes** human contact while handling, and at the same time, presents baited landing surfaces to the fly from all directions.
9. Pfeiffer teaches a beehive device having a trough shaped base of annular form and a plurality of downwardly pressed feet. Pfeiffer teaches ledges that "hold" the insecticide. In Pfeiffer, the insecticide material is poured down the apex wherein the ledges retain insecticide. (Please see col 2, lines 87-96). Unlike the present invention, the Pfeiffer design **maximizes** potential human contact and exposure with the applied insecticide.
10. The Pfeiffer design can be viewed as a series of discs of diminishing diameters stacked one upon another. Although this design produces some curved surfaces, much of the design surface area provides only flat surfaces, which are less attractive for flies to land on.
11. Prior to the advent of the present invention, commercially available insect station designs incorporate single surfaces, such as a flat design (please see the Exhibit 1). This single surface design, or flat design such as Conlee and the flat surfaces of Pfeiffer, are non-optimal.
12. For example, side-by-side empirical data are provided herein demonstrating unexpected advantageous properties of the present invention versus the flat design.

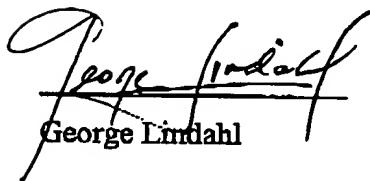
13. In this side-by-side comparative test, a single-surface flat station design (comparative), was compared to a tubular design (inventive) wherein the tubular station was designed to present baited landing surfaces to the fly from all directions.
14. The test system consisted of two 24 inch X 24 inch X 24 inch screen flight cages. A single station of each configuration was placed in each cage. A single 12 inch X 12 inch X 12 inch cage served as a control environment. 250 Domestic House Flies (*Musca domestica*) were released into each test cage and 30 Domestic House Flies were released into the control cage. The test substance consisted of a Tubular station coated with a sugar/nithiazine slurry and allowed to dry. This design was compared with a flat design coated on two sides with the same sugar/nithiazine mixture and allowed to dry. The slurry was from lot# JM220, in both cases, and contained approximately 0.5% Nithiazine.
15. One station of each design, flat and tubular, was placed into a test cage by hanging from the inside top of the cage. Small dishes with water soaked cotton were provided for the flies in each cage. The flies were introduced into the appropriate flight cages: 250 in each treated cage and 30 in the control cage. Dead fly counts were made at 1hr., 2 hr., 3hr., 4hr., 5hr., 6hr., and 19.5hr., after introduction of the flies.
16. As shown in Table 1 (Exhibit 2), the inventive design was unexpectedly superior in percent (%) reduction of flies. After 19.5 hours, the inventive design resulted in 58.8 % kill, whereas the flat design resulted in 33.6 % kill. The increase in kill is attributable solely to the change from a flat to a tubular design.
17. In fact, at every time point, the dead fly count was higher with the inventive design compared to the flat design (Exhibit 3).

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18. It is my opinion that neither Conlee nor Pfeiffer, alone or in combination
make the instant invention obvious.

The declarant has nothing further to say.


George Lindahl

18 July 2002
Date

WC 9044105 v1